

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RACE TIRES AMERICA, INC., a Division)
OF SPECIALTY TIRES OF AMERICA, INC.;)
SPECIALTY TIRES OF AMERICA, INC.;)
SPECIALTY TIRES OF AMERICA)
(PENNSYLVANIA), INC.; and SPECIALTY)
TIRES OF AMERICA (TENNESSEE), LLC,)

Plaintiffs,

v.

02: 07cv1294

HOOSIER RACING TIRE CORP., and)
DIRT MOTOR SPORTS, INC., d/b/a)
WORLD RACING GROUP,)

Defendants.

ORDER OF COURT

Presently pending before the Court are the following:

- HOOSIER’S MOTION TO COMPEL PRODUCTION OF ITS POTENTIALLY PRIVILEGED DOCUMENTS IN ADVANCE OF ORAL ARGUMENT (*Document No. 111*);
- DEFENDANT DIRT MOTOR SPORTS, INC.’S JOINDER IN HOOSIER’S MOTION TO COMPEL PRODUCTION OF ITS POTENTIALLY PRIVILEGED DOCUMENTS IN ADVANCE OF ORAL ARGUMENT (*Document No. 113*); and
- PLAINTIFFS’ OPPOSITION TO HOOSIER’S MOTION TO COMPEL PRODUCTION OF DIRT MOTOR SPORTS’ “POTENTIALLY PRIVILEGED DOCUMENTS” IN ADVANCE OF ORAL ARGUMENT (*Document No. 114*).

On Monday, November 3, 2008, the Court will hear oral argument on Plaintiffs’ Motion for Order (1) That Defendant Dirt Motor Sports, Inc. Waived Any Assertion Of Privilege as to Documents Produced in Discovery and (II) Removing “Attorneys’ Eyes Only”

Designation (*Document No. 101*). Initially, Plaintiffs claimed that 649 “potentially privileged” documents were found on Hard Drive Nos. 1, 2, 3, 4, and 5, which had been produced by Dirt Motor Sports, Inc. (“DMS”). However, it appears from recent filings that the parties had previously entered into an agreement with respect to any potentially privileged documents found on Hard Drive No. 3. *See* June 16, 2008, email from Joe Decker to Ted Jobes (“We will agree, in this instance only, that DMS does not waive the attorney-client or other privilege by producing the hard drive. . . .”)

DMS contends that a substantial number of the documents at issue actually came from Hard Drive No. 3, and a small number of the documents at issue actually came from Hard Drives 1, 2, 4, and 5. In response, Plaintiff states “[o]f the 177 ‘potentially privileged documents at issue, 21 reside on Drives 1, 4, or 5.” Reply Brief at 1 (*Document No. 101*) (emphasis added).

Accordingly, it appears to the Court that presently at issue are actually twenty-one (21) documents. Defendants have asked for copies of these documents, which Plaintiffs have declined. Instead, Plaintiffs produced a “hit list” which was generated by using the dtSearch software. Defendants have represented to the Court that they have been unable to replicate Plaintiffs’ searches. Accordingly, Defendants do not know which documents will be at issue during the hearing / argument which is scheduled on Monday, November 3, 2008, at 1:30 P.M.

It appears to the Court that Defendants will be highly prejudiced if they do not have the twenty-one (21) documents which are apparently at issue in advance of the argument. Accordingly, it is hereby **ORDERED** that Plaintiffs shall produce to both DMS and Hoosier those twenty-one (21) documents which “reside on Drives 1, 4, or 5”, as identified in Plaintiffs’

Reply Brief, no later than **Friday, October 31, 2008 at 10:00 A.M.** Plaintiffs shall also deliver to Chambers a hard copy of these twenty-one (21) documents no later than **Friday, October 31, 2008 at 10:00 A.M.** Accordingly, the Motion to Compel filed by Hoosier is **GRANTED IN PART AND DENIED IN PART.**

Furthermore, the motion to join filed by DMS is **GRANTED.**

So **ORDERED** this 29th day of October, 2008.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

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